

1 A Cost per point, uh-huh (affirmative).

2 Q Cost per point is based on the total population of
3 those various areas, is that correct?

4 A Yes ma'am.

5 Q So doesn't it stand to reason that having the
6 translators increases your cost per point?

7 MR. SOUTHMAYD: Excuse me, I think that's been asked
8 and answered a couple times.

9 MS. LANCASTER: Well, I'm asking it one more time
10 because there seems to be some confusion.

11 MR. SOUTHMAYD: Okay, well just don't badger him. I
12 think he's answered that three times and the answer has
13 been, well, maybe yes, maybe no. But if you want to go at
14 it again, okay.

15 MS. LANCASTER: Okay, I'm going at it one more time.

16 MS. LANCASTER RESUMES:

17 A As a general statement I would say yes.

18 Q Okay.

19 A But there are influences within the market that -- you
20 know, there's always exceptions.

21 Q Corr -- okay, I understand that. Who -- when you say
22 that market influences, if you go to sell somebody
23 advertising and they come back and say well my
24 competitor is selling me this equivalent ad of what
25 you're trying to do at a less -- at less cost. Does

1 each salesperson have the authority to just on the spot
2 reduce your normal prices for tho -- for what you're
3 trying to sell?

4 A Typically no.

5 Q All right. How does that work?

6 A In the in -- in the -- in the -- in Gary's case, I'll
7 use him as an example because he's the one that I work
8 most closely with, Gary will come to me and say hey, I
9 was over at, you know, such and such a client's, I was
10 over at a client's the other day and -- and they said
11 that so and so if offering them this. And we'll take a
12 look at it and see if that's something that we have
13 pretty much seen. Typically what's being offered isn't
14 offered to just one. You know, it's -- we see if
15 repetitively throughout the community. And Gary will
16 come to me and say this is what's being done or he'll
17 call me and he'll say, hey, I'm at such and such place
18 and -- and this was the -- the -- you know, the last
19 offer that so and so had but they do want to reach
20 peninsula wide as well, can I offer them the same rate.
21 That gets real tricky when they're offering four
22 stations and we only have three, you know, so we
23 usually have to compensate in some other way.

24 Q But don't -- I thought that your big advertising theory
25 is that you're the only group that offers peninsula

1 wide, that you offer a larger area.....

2 A We do.

3 Qof service than any other station.

4 A Uh-huh (affirmative).

5 Q So how can -- does it really matter that they have four
6 stations and you have three if you're covering a larger
7 area?

8 A Yeah. But you're assuming that -- that one advertising
9 plan fits everybody's needs and that's not the case.
10 Everybody that comes through our door has a different
11 opinion and different idea as to what they need for
12 their business. And 90 percent of the time it's not a
13 matter of walking through the door and convincing them
14 that you're number one, it's a matter of convincing
15 them that you can do what they're trying to do with the
16 amount of money or with the budget or with the idea or
17 with the plan that they have. So, you know, every
18 sale, it's not like you walk in with a manual and you
19 sit down and say this is how it works, every time you
20 walk into a client's place of business there's 1,500
21 different variables that you're dealing with and it's
22 not a matter of, you know, one plan fits all.

23 Q I don't mean to imply that and I'm sorry if you think
24 that I did. But I would think that if you have an
25 advertiser who wants to reach a large number of people

1 that you would be their first choice because you're the
2 only station that will reach the large number of people
3 that they're looking for. Is that a accurate
4 statement?

5 A In some cases yes. Again, you know, one size doesn't
6 fit all. I can give you a classic example is Pizza
7 Hut. They have a store in Kenai and they have a store
8 in Kodiak. They do not want to advertise on our radio
9 station because of the simple fact that they have two
10 different price points in Kodiak and Kenai and they
11 don't want the people coming into the Kodiak store
12 screaming that they want the pizza for \$9.99 that
13 they're paying \$13.99 for. So in that particular case
14 that scenario has worked against us because they don't
15 want what -- you know, people knowing in the different
16 markets what they're doing. McDonalds we've had the
17 same problem with, the folks in Kodiak charge more for
18 their food than what they do in the Kenai Soldotna and
19 -- and the Homer area. So in that particular case
20 McDonalds in -- in Kodiak has refused to -- to
21 advertise.

22 Q And this is a problem because you're rebroadcasting the
23 same signal in both markets, is that correct?

24 A Yeah, essentially yes.

25 Q So that you are unable to sell to just the smaller

1 market.

2 A That's not necessarily true.

3 Q Okay.

4 A They have -- they have the option of advertising their
5 own price point in that individual market. We have
6 several people that are on in Kodiak right now that are
7 advertising to Kodiak and Kodiak alone. Because they
8 don't expect somebody to come to them all the way over
9 from Homer to fly over there to take, you know, part in
10 -- in whatever services that they are providing at this
11 point in time.

12 Q Well, if you have the ability to advertise
13 individually, have a personal, you know, advertising
14 program in each of the markets then you are an equal
15 competitor with the other people who are advertising in
16 those markets, aren't you?

17 A I'm not sure I understand the question.

18 Q Well, I thought I understood what you're saying that
19 you have problems with national accounts who might not
20 want one ad, the same ad, to be run in this large
21 territory which is.....

22 A Correct.

23 Qyour big selling point is that you cover a large
24 territory.

25 A Correct.

- 1 Q Is that correct?
- 2 A Uh-huh (affirmative).
- 3 Q But then when I expressed that I understood your
- 4 testimony to be that no, you still could individualize
- 5 the ads for the two different places that you gave as
- 6 your example.
- 7 A Uh-huh (affirmative).
- 8 Q Well, if you can do individual ads for those two places
- 9 you're still on the same footing as any competitor that
- 10 you would have in those areas, aren't you?
- 11 A If I understand what you're asking, yes. Yeah, we do
- 12 have the ability to localize the ads for the different
- 13 communities.
- 14 Q Okay.
- 15 A If that's the advertiser's desire.
- 16 Q So you're really not at a disadvantage as opposed to
- 17 any of your competitors in either of those communities,
- 18 are you?
- 19 A In what -- in what -- in regards -- I -- I -- I'm not
- 20 following you.
- 21 Q Okay. What was the example that you just used, the
- 22 Kodiak and.....
- 23 A And Seward.
- 24 Q Seward.
- 25 A Uh-huh (affirmative).

1 Q You could go in and sell Seward, sell people in Seward
2 an ad that's just going to run in Seward. Is that
3 correct?

4 A No.

5 Q All right.

6 A The ad would run peninsula wide but the approach would
7 be for Seward. You know, for instance here's the Polar
8 Bear Plunge proposal that we put together and what we
9 basically do is we put -- the Polar Bear Plunge is a
10 January event where it's a cancer fund raiser. People
11 go out and get sponsors and then they go jump in the
12 bay in January.

13 UNIDENTIFIED MALE: Oh.

14 A Yeah. So basically what we do is we put together a
15 proposal that -- that promotes the Seward Polar Bear
16 Plunge. Okay? And different restaurants and different
17 businesses within the area partner with us in order to
18 incorporate those ads and we put a package together and
19 it promotes the event for that community.

20 Q I guess.....

21 A Those ads go peninsula wide, but it's primarily
22 targeted to bringing people or reaching the people that
23 are in Seward during that particular function.

24 Q Okay. That's not really analogous to what I'm trying
25 to ask you though. Because I'm talking about a

1 national ad.

2 A Okay.

3 Q Which you indicated was a disadvantage at times, it's
4 caused you problems with national ads and I think you
5 used Pizza Hut and maybe McDonalds as your examples.
6 Because the prices are different in each area.

7 A Uh-huh (affirmative).

8 Q And you're broadcasting peninsula wide but you -- they
9 don't want to broadcast peninsula wide because then
10 these various areas are going to see that their prices
11 are different.

12 A Uh-huh (affirmative).

13 Q Do you have the ability to solve that problem and just
14 -- and broadcast either the different prices in the
15 different areas?

16 A Okay. My example -- the example that I gave you was
17 not to show you a problem. You had -- I had expressed
18 that one size does not fit all and I was using that as
19 an example to show that, you know, just a broad
20 statement that says this is the way it is isn't how it
21 is. Basically what I'm trying to show is and what I'm
22 -- the -- the point that I was trying to make is is
23 that broad statements in advertising don't work.
24 Because each time you walk in and you sit down a
25 different client you have 1,500 different variables to

1 be dealing with. So there are no two sales that are
2 identical. And so, you know, to say that -- that this
3 is the problem, that wasn't -- that wasn't -- I wasn't
4 saying that it was a problem, I was using that as an
5 example of some of the variables that we have to deal
6 with. Now some of the variables that you're referring
7 to are can we come in and -- and create an ad for say
8 Kodiak that's geared toward just the Kodiak market.
9 Yes, we can do that. Can we take a national ad and
10 develop -- and run two ads with different price points
11 in them, yes we can do that as well. That's not
12 dictated by us, that's dictated by the client and the
13 client's needs at the time.

14 Q Okay. So even though your main marketing advantage
15 would be your widespread territory, the number of
16 people that you cover, you do have the ability to
17 individualize ads so that you -- you are -- you can
18 remain competitive on these national accounts like
19 we're just talking about.

20 A Yes. In most cases they don't do that. But, yes, we
21 do have that ability.

22 Q Okay. Do you accept all kinds of ads? Anybody that
23 calls you up and wants to place an ad on any of your
24 stations do you automatically accept them?

25 A Within reason.

1 Q What's that mean?

2 A Well, if somebody calls up and they have an adult porn
3 shop obviously we're not going to go in and do a live
4 remote. I mean I'm not trying to be facetious, I'm
5 just saying, you know, we -- we do have some
6 constraints and some limitations that -- that we've
7 placed upon ourselves.

8 Q Do you advertise alcoholic beverages?

9 A No.

10 Q Do you advertise night clubs?

11 A No.

12 Q Do you advertise dances?

13 A Yes. And.....

14 Q What ki -- is there any restrictions on the types of
15 dances that you will advertise?

16 A Well, typically what we do is we do -- we don't do beer
17 or alcohol ads. And -- but we do lounge ads, if
18 there's somebody that's going to be appearing in a
19 lounge we'll say, you know, whoever the group is now
20 appearing at the lounge at the Lands End, something
21 along those lines.

22 Q Is there -- what other types of things would you not
23 accept advertisements from?

24 A We typically don't do Halloween ads. But other than
25 that -- it's just a matter of -- of individual taste

1 within the ad. I mean you can have a personal --
2 perfectly respectable product and have the wrong
3 approach to it and we might choose not to run that ad,
4 you know, if it's in poor taste.

5 Q And who makes that decision?

6 A That would be Dave Becker.

7 Q Okay.

8 A For the most part. I try to head most of that off
9 before we get there. I try to advise the clients
10 accordingly that, you know, Cheech and Chong blowing a
11 joint in the background isn't necessarily the best way
12 to sell their product, you know, or -- that's just an
13 example, but, you know, those types of things.

14 Q Well, would it be fair to say that Mr. Becker's
15 religious beliefs influence the type of ads that his
16 stations will play?

17 A No ma'am. No, I wouldn't say that. Because we have
18 found -- you know, for instance we don't do -- let's
19 say for instance it's a race ad. There's no need to
20 mention in the race ad that, you know, there's going to
21 be beer and alcohol served. So we promote the event
22 without the beer and alcohol in the ad. And I don't
23 think in the 12 years that I've been here there have
24 been two people that have objected to that.

25 Q But you wouldn't say that the fact that you would not

1 allow the advertiser to mention beer in the ad was
2 based upon that was against Mr. Becker's religious
3 beliefs?

4 A Could you rephrase the question? I'm sorry.

5 Q Yeah. I think I had originally asked you if the ads
6 that you accept were determined in large part by
7 whether they were acceptable to Mr. Becker's religious
8 views and you said no and you gave an example of a race
9 track, you can advertise the race you just wouldn't say
10 that there was beer. But the fact that you won't say
11 there was beer, is that due to Mr. Becker's religious
12 beliefs that you shouldn't drink?

13 A No, that's based upon his policy as to what's
14 acceptable for ads on the air.

15 Q Okay.

16 A I don't know if that answers the question that you're
17 asking or not, but that's -- it's been station policy
18 ever since I've been here.

19 Q Okay. And Mr. Becker made that policy.

20 A Correct.

21 Q Right. Who makes up the jingles that you guys use on
22 the air?

23 A That's a good question. Some of them have been
24 purchased by clients and they provide us with the
25 jingles. Some of them are provided by jingle

1 manufacturers and some of them are produced locally.

2 Q Okay. And how about the -- I want to say the super --
3 I was told that at one point you had a super station,
4 it was kind of like your motto. Are you familiar with
5 that?

6 A That would -- that would have been before my time.

7 Q Okay. What is your current -- do you have a current -
8 - I don't know the terminology here, a current motto or
9 when it comes up on a -- an ad for your station, a
10 phrase that you frequently use?

11 A They change regularly. We have 15 second liners that -
12 - that we provide them with like, gosh, every three to
13 four weeks, up to three months we'll provide them with
14 a list of liners that the air personalities at the
15 station come up with. They get sent in, they're
16 produced and then they're shipped back to us to put in
17 for 15 second liners here and there in between songs.
18 So.....

19 Q What's the current one?

20 A Beats the heck out of me, I haven't been here in a
21 month and a half.

22 Q What the one -- the last one you remember?

23 A We used to use catch the wave a lot for K Wave. You're
24 in KPEN country for KPEN is one that we use frequently.

25

1 Q Do you use any that promote the idea that you cover a
2 large area?

3 A Well, typically we do from -- any -- any liner -- I
4 shouldn't say any, but frequently we'll do from Seward
5 to Seldovia, Kenai to Kodiak, you're in KPEN country.
6 Or, you know, whatever station that -- for K Wave and
7 KPEN that would be appropriate because they're both
8 peninsula wide.

9 Q When they do the liner like K Wave for example, do you
10 follow that with the frequency?

11 A I believe so.

12 Q How do you do that if you're on a different frequency
13 on a translator versus the frequency on the main
14 station?

15 A Well, we have -- our liners -- we go by KPEN FM 102 and
16 KPEN FM 105. And that falls back -- that even predates
17 me back to when you had the tuner dial rather than the
18 digital. And you turn the dial and you get around 102
19 and whether it was 101.3, 101.7 or 102.3 you would get
20 right around 102 and it would tune in. And that's
21 something that Dave has never really gotten away from.
22 And then what we do is we do our translator ID's. When
23 we do our translator ID then we have the tags with
24 the -- the translator call letters and everything in
25 those separate from our regular liners.

1 Q For K Wave what's the frequency when you do your
2 liners, what frequency follows K Wave?

3 A FM 105.

4 Q Is there any other information between you saying K
5 Wave and you saying the frequency, do you all insert
6 anything in there?

7 A No, typi -- well, I don't know. I -- I couldn't answer
8 that. You know, I'm trying to think. That -- I
9 couldn't answer that, because it changes so frequently.
10 I just don't pay attention to all of the liners
11 anymore. I listen to the commercials because that's --
12 it -- we drive down the road and I get in trouble all
13 of the time because my wife's telling me, you know,
14 sssh, I want to listen to this song and then the
15 commercial comes on and she says what were you going to
16 say and, sssh, I have to listen to this commercial.
17 (Whispered conversation)

18 Q Let me see, I'm looking back over my things to see if I
19 have anything else that -- let me go off for about five
20 -- or a minute or two.

21 THE REPORTER: Off record.

22 (Off record)

23 (On record)

24 THE REPORTER: Back on record.

25 MS. LANCASTER RESUMES:

1 Q Mr. Coval, I just have one question that I can think
2 of. Is there any type of policy that if an advertiser
3 advertises with you then they would not advertise on
4 another -- one of your competitor's stations?

5 A No. I've heard of that being done the reverse way.
6 Gary Hondel, the account exec that we have working for
7 us now, told me when he first came on board, he used to
8 work for KSRM, and he told me of a package that they
9 had over there, an introductory package to where if you
10 purchase the package one of the conditions was -- it
11 was at a special rate, one of the conditions was that
12 you could not advertise with other radio stations in
13 the area. But we've never held to that policy.

14 Q Who do you consider your biggest competitors?

15 A In which areas?

16 Q In all of the areas.

17 A We all -- in the Kenai -- Kenai Soldotna area it would
18 be K -- KSRM and WHQ. In Kodiak KRX -- KRXX and KVOK.

19 Q Okay. So each of the areas -- there are at least two
20 stations that are competitive with you.

21 A No, Seward -- I don't know what the status of the
22 Seward station is. It's kind of a been a hit and miss,
23 on again, off again type deal for him for the last
24 three or four years. But it's always been that way
25 ever since I've been here, somebody will be on the air

1 for awhile and then they find other interests and they
2 kind of fade out for awhile and then they come back.
3 So -- there's one -- one station over there that's
4 intermittent, on -- on again, off again.

5 Q Okay.

6 MR. SHOOK: Jeff, I'm going to take one minute here.

7 MS. SOUTHMAYD: Sure.

8 MS. LANCASTER: One more minute, we're going off.

9 THE REPORTER: Off record.

10 (Off record)

11 (On record)

12 THE REPORTER: Back on record.

13 MS. LANCASTER RESUMES:

14 Q Mr. Coval, are you aware of any reason that PCI may not
15 have -- has not built a full power station in Kodiak or
16 in Seward?

17 A Well, until this whole thing came up I didn't -- it
18 wasn't -- it wasn't necessary. You know, we were
19 serving Kodiak before the Kodiak stations were on the
20 air to the best of my knowledge. And we did that
21 through the use of translators because there just
22 wasn't enough revenue in Kodiak to warrant putting a
23 full station on. We've operated the translators out
24 there successfully and had never had a problem with the
25 renewal of the permits until this whole issue came up

1 when a Petition to Deny was filed and an investigation
2 was opened.

3 Q Translators are a lot cheaper to operate, is that
4 correct?

5 A I would imagine so, yes.

6 Q Yeah. Cheaper to maintain?

7 A I would imagine so.

8 Q Yeah. Cheaper to construct?

9 A Yes.

10 Q Okay. Was there ever any discussion that you
11 participated in or overheard regarding building full
12 power stations in either of those markets?

13 A No. No. But I do know that every time that he applied
14 for -- every time he, being Mr. Becker, applied for the
15 necessary permits to open up a translator in an area
16 the FCC was more than willing to grant any waivers or
17 do anything else that was needed for him to do that.

18 Q Are you including all the renewals that you know about
19 also?

20 A Well, I'm talking about in the building phase.

21 Q Oh. In the.....

22 A I mean the.....

23 Q construction phase?

24 A During the construction phase anything that he said
25 that he wanted to do it the FCC looked at it and said

1 great, go ahead. And then after they were all in place
2 then it comes -- then comes the question as to whether
3 or not they should be renewed.

4 Q You weren't around back when he was constructing all
5 these.....

6 A No.

7 Qstations were you?

8 A I was -- I was on board when the Seward translator came
9 on.

10 Q Okay. So your knowledge as to what occurred back in
11 those days comes from who?

12 A Just station history. I've seen some of the
13 construction permits and stuff that are still in the
14 public file.

15 Q Okay. And has Mr. Becker ever made comments to you
16 that anytime he applied for anything he got it
17 basically?

18 A Not in -- not in so many words, no. When we applied
19 for the -- I was here for the Seward paperwork and I
20 asked him how that was going and he said, well, you
21 know, the FCC has granted us all the waivers and
22 everything that we need in order to make it happen.
23 And I just assumed that that had been the case with
24 each and every one of the translators because he didn't
25 seem to have any trouble getting the paperwork and --

1 necessary to -- to bring the Seward translator online.

2 Q When did you first become aware that there was any
3 problem with any of the translators as far as the FCC
4 was concerned?

5 A Right after I took over as Sales Manager and -- and
6 Kodiak went offline.

7 (Whispered conversation)

8 Q When was that?

9 A Approximately six years ago.

10 MS. LANCASTER: I have no further questions.

11 THE REPORTER: Are you ready to go off record?

12 CROSS EXAMINATION

13 BY MR. SOUTHMAYD:

14 Q Terry, hi, this is Jeff Southmayd.

15 A Hi Jeff.

16 Q Wanted to ask you a few things for clarification.

17 A Sure.

18 Q First of all, have -- for the record, and I don't
19 recall, have you and I ever spoken before?

20 A No sir.

21 Q Okay. Before to -- before this deposition.

22 A No sir.

23 Q Okay. Now as I understand it you work out of the
24 Soldotna office?

25 A Yes, the Soldotna Kenai office.

- 1 Q Okay. And that -- and so does Gary Hondel works out of
2 the Kenai Soldotna office?
- 3 A That is correct.
- 4 Q Okay. Okay. And -- now with regard to programming on
5 the four stations, and I'm referring to K Wave in
6 Homer, KGTL in Homer, KPEN in Soldotna and K Bay in
7 Nikiski. Is that -- those are the four full power
8 stations?
- 9 A Correct.
- 10 Q Do they carry -- let's just focus on the three FM.
- 11 A Okay.
- 12 Q They carry news on those stations?
- 13 A Yes.
- 14 Q Do they carry public service announcements?
- 15 A Yes sir.
- 16 Q They carry community bulletin boards?
- 17 A Yes sir.
- 18 Q Do they carry news relating to events in Kenai?
- 19 A Yes.
- 20 Q And Anchor Point?
- 21 A Yes.
- 22 Q Kachemak City?
- 23 A Yes.
- 24 Q Okay. Do they carry public service announcements in
25 your experience in the past relating to Kenai?

1 A Yes.

2 Q Anchor Point?

3 A Yes.

4 Q Kachemak City?

5 A Yes.

6 Q Kodiak?

7 A Yes.

8 Q Okay.

9 A As.....

10 Q They carry news items regarding Kodiak on the FM?

11 A When -- yes, if they're newsworthy items.

12 Q Okay.

13 A We don't -- we don't focus necessarily so much on the -

14 - you know, the trivial, but fish openings, weather

15 related type stuff. You know, if there's going to be

16 openings or closures or -- or that type of stuff. We

17 don't carry the everyday mundane, you know, Mayor Bob

18 lost his dog today type stuff. But yes, we do carry

19 news for those areas.

20 Q But while Peninsula can originate programming on these

21 translators, the programmings broadcast on these

22 translators tailored to the local community to some

23 extent?

24 A I -- I don't know, I -- I -- I don't think I understand

25 the full question Jeff.

- 1 Q Well, for example, K Wave is rebroadcast on a
2 translator at Kodiak, isn't it?
- 3 A Correct.
- 4 Q On that translator do they -- has K Wave in the past
5 carried public service announcements relating to things
6 in Kodiak?
- 7 A Yes, we have, but those public service announcements go
8 out over the whole broadcast area, not just Kodiak's.
- 9 Q Right. But they're rebroadcast on the translator in
10 Kodiak.
- 11 A Correct.
- 12 Q Okay. And would that be true of the translators in
13 Kenai carrying Kenai related programming from time to
14 time?
- 15 A Yes sir.
- 16 Q And the Anchor Point carrying Anchor Point
17 programming.....
- 18 A Correct.
- 19 Qfrom time to time?
- 20 A Correct.
- 21 Q And the Kachemak City translator carrying Kachemak City
22 programming from time to time?
- 23 A Correct.
- 24 Q Okay. Now, you've spoken a couple of times about some
25 competitor who sells adverti -- by advertising on one

1 station and you get three stations free I think you
2 said, was that -- is that what you indicated in your
3 testimony?

4 A Yes sir.

5 Q Who is that?

6 A John Davis with KSRM.

7 Q And what stations does Davis own?

8 A KSRM, KWHQ, K Kiss and KSLD. And that testimony was
9 received from clients in the field who have told us
10 that, you know, they're not going to pay what we're
11 asking per station because they get all four stations
12 for the same price.

13 Q They've told you personally that?

14 A Correct.

15 Q Okay. Now just so -- KSRM, what is that, is that an AM
16 or FM?

17 A AM station.

18 Q Okay. KWHQ?

19 A Is an FM station.

20 Q KKIS?

21 A K Kiss is an FM station.

22 Q KSLD?

23 A Is an AM station.

24 Q So this Davis owns two FM's and two AM's. And is that
25 in that Kenai Soldotna peninsula?

- 1 A Correct.
- 2 Q Okay. So you sell advertising, as I understand it, in
3 that Kenai Soldotna area on K Bay and KPEN.
- 4 A As well as K Wave, yes.
- 5 Q Okay. And he has a policy that if you buy advertising
6 on one of his stations he gives you the other three
7 free?
- 8 A That's been our experience. I don't know if that's his
9 policy. I think it's more or less whatever he needs to
10 do in order to make sure that the revenue flows his way
11 than our way.
- 12 Q When did you first run into this policy of Davis'?
- 13 A It all started back when Chester Coleman and there was
14 a discrepancy as to who owned KS -- KSLD and K Kiss is
15 when we first saw it. Chester Coleman owned KSLD and K
16 Kiss and John Davis owned KSRM and WHQ and they had a
17 local marketing agreement of some sort in place and
18 John started marketing all four of the stations at that
19 time.
- 20 Q So Davis is selling four stations against your two
21 stations?
- 22 A Our two local stations in the area, yes.
- 23 Q And he has a policy that he'll -- did you say he'll
24 beat your rate, card rate, and give the other sta --
25 three stations for free or what is his policy?

1 A Well, the way we've heard it from clients in the field
2 is is that, you know, we're charging, you know, rate
3 card for each individual station and they're paying
4 rate card for a single station and are being bonused
5 two or three stations.

6 Q So what's the net effect of that?

7 A The net effect of that is is we either bring our rates
8 down to be competitive or we don't -- we don't get the
9 buy.

10 Q I see. Now you indicated in your testimony earlier
11 that apparently this FCC proceeding is something of a
12 factor in your ability to sell advertising. Is that a
13 fair characterization?

14 A Yes sir.

15 Q How does that work? Has it been a factor?

16 A Well, at different points in times it's taken on
17 different factors. One factor is, you know, the -- our
18 -- for instance we have several clients that aren't on
19 the air in Kodiak right now because they work with the
20 FCC in different areas and they don't want any trouble
21 from the FCC or with our radio stations so they have
22 chosen to stay off of the air. and I'm speaking
23 primarily to wireless services out there. They would
24 just rather sit back and wait and see what happens
25 before they -- they start advertising with us.

1 Q So are you saying that they don't advertise because
2 they're afraid if they do they'll have FCC problems?

3 A Well, when you talk to people you get all kinds of
4 different things that are said, you know how that goes.
5 But basically the two -- the -- the primary reasons
6 when I spoke with them was is they're FCC regulated and
7 they don't want to become involved with us until they
8 see what happens with the FCC. So that was just kind
9 of their -- their statement. So -- in -- in another
10 situation, you know, the -- John Davis has taken out
11 full page ads in the paper up there proclaiming that,
12 you know, we're operating illegally and that we're a
13 pirate station and that nobody should advertise with us
14 because we could be off the air tomorrow and that their
15 advertising would, you know, be ineffective. And, you
16 know, when you keep having those type of innuendoes
17 thrown up at you before it's even decided in a court of
18 law you say it enough times and it becomes the truth in
19 certain people's minds.

20 Q So are there advertisers who have withdrawn advertising
21 or refuse to advertise because of this FCC proceeding?

22 A Yes.

23 Q Have there been newspaper articles in the markets in
24 which you sell advertising about this FCC proceeding?

25 A Yes, there have.

- 1 Q And has that had a positive impact on your ability to
2 sell advertising or a negative impact?
- 3 A Negative, especially when someone takes that article
4 and faxes it to every ad agency in the country.
- 5 Q Has that happened?
- 6 A Yes sir, it has.
- 7 Q Who did that?
- 8 A John Davis.
- 9 Q In these newspaper articles do they quote FCC
10 employee.....
- 11 A I.....
- 12 Qindicating that you're operating illegally?
- 13 A I don't recall. I think that they -- most of them have
14 referred to the Orders that have been handed down. So
15 if that's what you mean by quoting FCC personnel, yes.
- 16 Q So they -- these newspaper articles have quoted from
17 FCC decisions or.....
- 18 A Yes. Usually what has wound up happening is is they
19 get faxed a copy of the -- the Order after it becomes
20 public knowledge and then they start a story from there
21 and follow up on it.
- 22 Q So you're -- are you testifying that your competitor
23 used the existence of this FCC proceeding to negatively
24 impact your business and to hurt you competitive?
- 25 A I would say that that is true, yes.

1 Q And based on your sales experience what has this meant
2 in lost revenues? Are we talking about 10's of
3 dollars, 100's, 1,000's, 10's of 1,000, 100's of 1,000?

4 A From a personal standpoint I have seen about -- well,
5 I'm making about \$2,000.00 less this year than what --
6 per month than what I was making last year
7 approximately. You know, my paychecks -- I -- I've
8 seen it in my paycheck. As a whole for the station I
9 would say it's probably affected 20 to -- on the
10 conservative side 20 to 30 percent of our revenue,
11 maybe as much as 40 percent.

12 Q Cost you as much as 40 percent of the normal revenue
13 you would have.

14 A Yes.

15 Q Now if -- you're the Sales Manager so you do sales
16 projections and you -- I assume. And you have
17 expertise in the market and have some idea of the
18 extent of radio revenues in the market?

19 A You're starting to scare me when you say expertise, but
20 go ahead.

21 Q Well, would you agree that that's true?

22 A Yes.

23 Q Okay. If Mr. Becker's position's vindicated are you
24 going to be able to recoup that 40 percent of revenues
25 that you've lost over the course of this FCC

1 proceeding?

2 A I seriously doubt it.

3 Q Is there irreparable injury then?

4 A I would say so, yes.

5 Q So if he's right Peninsula Communications has been
6 damaged by this FCC proceeding. Would it be, again,
7 10's of 1,000's of dollars, 100's of 1,000's of
8 dollars, or can you put a estimate on it?

9 A Well, from -- from Mr. Becker's standpoint I would say
10 probably 100's of 1,000's of dollars. By the time --
11 by the time he gets done with court fees and -- and
12 your fees I would say that yeah, well into.....

13 Q How about revenues though?

14 A In revenues? Well, knowing what we used to do in
15 Kodiak, or, you know, what -- when Glenn was here, I
16 would say that we've lost several \$100,000.00 out of
17 that market in the six years that we've been off. So I
18 would say well into the \$100,000.00's.

19 Q As a result of this FCC negative publicity.

20 A Correct.

21 Q And are you saying this 100's of 1,000's, that's sort
22 of -- is that group wide? Taking into account all the
23 stations or.....

24 A I would say taking into all. Again, I don't have -- I
25 don't have the -- the where with all to tell you what

1 the station was making prior to or what it's making
2 currently. You know, those -- that's handled by
3 someone else, that's not my department.

4 Q I see.

5 A I know what -- I know what we're doing -- what Gary and
6 I are doing sales wise and I know the struggles that
7 we've had over this past couple of years.

8 Q In a typical month, say over the past year, how many
9 times would you say you've run into this refusal to buy
10 or negative impact in your sales effort as a result of
11 this proceeding? Say in an average month.

12 A It varies, but we hear rumblings of it at least two to
13 three times a month.

14 Q Two or three times.

15 A Yes.

16 Q Okay. Now are there any sources for this other than
17 Mr. Davis and newspaper articles?

18 A Sources for what sir?

19 Q Publicity on this proceeding.

20 A No.

21 Q I mean have there been -- has there been television
22 coverage?

23 A No.

24 Q Okay. How about Mr. Davis' radio stations, do they
25 ever put out news items or stories about the FCC

1 proceeding?

2 A Yes, every time -- every time one of the -- I don't
3 know what you call it, but anytime that -- that action
4 from the FCC has been made public and been provided to
5 their lawyer it's been a news item on their stations.

6 Q So they promote it in the news.

7 A Yes.

8 Q So your bad news is their good news, is that the way it
9 works?

10 A Yes.

11 Q And typically do you run -- what happens after these
12 stories run, have you had an experience -- had you
13 gotten any feedback?

14 A Typically what winds up happening is I hear about it
15 from my clients when I go into their office, they want
16 to know, you know, what's up or what's going on. We
17 get calls at the station wanting to know whether or not
18 it's true.

19 Q Does this pending FCC proceeding, has that been a
20 factor in your decision to leave?

21 A Yes, it has.

22 Q To your knowledge has Mr. Becker lost other employees
23 as a result of this FCC proceeding?

24 A I believe that he has, yes.

25 (Pause)

1 Q Do you have any knowledge of the revenues that Mr.
2 Davis is generating through the operation of his
3 station?

4 A No, none whatsoever.

5 Q Do you know whether Mr. Davis himself has been the
6 subject of an FCC proceeding?

7 A I don't know. I know he had one pending, he -- there
8 was some question as to whether or not he had paid a
9 fine that he had for illegal sale and transfer of the
10 stations of KSLD and K Kiss, but I don't know what the
11 standing currently is on that.

12 Q I see. Do you have any copies of this media
13 information Mr. Davis has handed out regarding this
14 proceeding?

15 A I don't. Most everything -- anytime an article breaks
16 in the paper I've faxed it to Dave Becker.

17 Q Doesn't -- but didn't you tell me that Davis hands out
18 some sort of promotional material about Peninsula?

19 A Well, what he'll do is when -- when an article -- what
20 he'll do is like when he gets the -- a fax from the --
21 from his lawyer or from the FCC it's been made
22 available to whoever wants to see it. I don't know if
23 he's actually handed that out publicly but I know that
24 it's been faxed over to the -- like the -- the local
25 newspaper and then they take it from there.

1 Q So as Sales Manager of the Peninsula group of stations
2 how would you characterize the impact that this FCC
3 proceeding has had on the business of the station, this
4 station?

5 A Well, it -- it's hurt. You know, I -- typically when a
6 story like that breaks and it gets faxed out to all the
7 agencies then the agencies have to turn around and have
8 an obligation to their client to call me and to
9 question what it is that's going on. In the time that
10 I'm bolstering their confidence in us as a radio group
11 and our ability to meet their needs, that's time that's
12 taken away from me spending with, you know, new and --
13 and potential clients.

14 Q Well, on a scale of one to 10, one being no impact and
15 10 being absolute disaster, what number would represent
16 the impact this has had on the revenues of the
17 Peninsula group?

18 A Well, we're still afloat so I mean it hasn't been
19 catastrophic, I mean it hasn't forced us out. But I
20 would say depending on the time of the year between a
21 four and a six, maybe a seven.

22 Q Okay, thank you, that's all I have.

23 MS. LANCASTER: I have a few follow up questions.

24 MR. SOUTHMAYD: Okay.

25 MS. LANCASTER: Just a minute.

REDIRECT EXAMINATION

1

2 BY MS. LANCASTER:

3

Q Mr. Coval, give me the names of the clients, the
potential clients who told you that Davis was giving
away three stations for free.

5

6

A Scott Cun -- Scott Cunningham.

7

Q Wait a minute, hold on. And who is he with?

8

A Peninsula McDonalds.

9

MR. SOUTHMAYD: Excuse me, is that McDonalds as in the
hamburger?

10

11

THE WITNESS: Yes.

12

MR. SOUTHMAYD: Okay.

13

Q Okay. Who else?

14

A Mike Sweeney, Sweeney's Clothing.

15

Q And when did Mike Sweeney tell you that?

16

A In the course of conversation.

17

Q When?

18

A I -- I don't.....

19

Q How long ago?

20

A Within the last two years or so.

21

Q So that could have been as much as two years ago that
he told you that?

22

23

A Yes.

24

Q And how about the McDonalds, when was that?

25

A Same time frame.